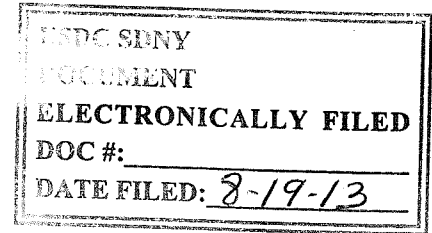


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
STEVEN MERCIER,

Plaintiff,

-against-

RAYMOND KELLY, Commissioner of the New
York City Police Department, both as
Commissioner and in his individual capacity; and
THE CITY OF NEW YORK

Defendants.
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10-CV-7951 (ALC)(JCF)

ORDER

ANDREW L. CARTER, JR., United States District Judge:

On April 30, 2013, Magistrate Judge James Francis issued a Report and Recommendation (“R & R”) (Dkt. No. 41), recommending that the Court grant Defendants’ motion for summary judgment (Dkt. No. 33). The Court adopts Judge Francis’s R & R in its entirety.

In reviewing a magistrate judge’s report and recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a magistrate judge provides notice to the parties in a report and recommendation that any objections must be provided within a certain period, and no such objections are filed, the district court may adopt the report “as long as the factual and legal bases supporting the findings and conclusions set forth in those sections are not clearly erroneous or contrary to law.” Adams v. New York State Dep’t of Educ., 855 F. Supp. 2d 205, 206 (S.D.N.Y. 2012) (citing Fed. R. Civ. P. 72(b)). Put another way, “[i]t does not appear that Congress intended to require district court review of a magistrate’s factual or legal

conclusions, under a *de novo* or any other standard, when neither party objects to those findings.” Thomas v. Arn, 474 U.S. 140, 150, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985).

Plaintiff Steven Mercier brought an action pursuant to 42 U.S.C. § 1983, alleging violations of his constitutional rights by Defendants. Specifically, Mercier, an occasional street performer in Times Square as the “Big Apple,” claimed that he was treated differently from other performers and in particular the “Naked Cowboy.”

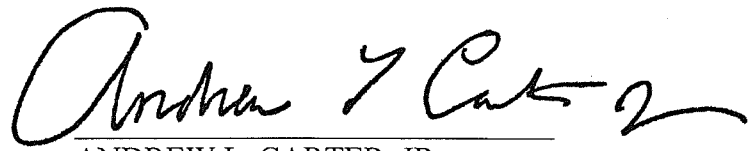
As laid out in Judge Francis’s thoughtful R & R, Mercier does not establish an underlying First Amendment or Equal Protection violation. Likewise, Mercier has not established a Fourteenth Amendment claim for violation of his due process rights because the alleged discrimination is not egregious enough to survive summary judgment. There being no constitutional violation to support Mercier’s section 1983 claim, summary judgment is proper. Additionally, Mercier does not establish that municipal policy or custom caused deprivation of his rights. Summary judgment is also proper as to Defendant Kelly in his official and individual capacity. Mercier’s claims against Kelly in his official capacity and the claims against the city are redundant and Mercier’s claims against Kelly in his individual capacity are not supported by admissible evidence.

Judge Francis’s R & R informed the parties of their right to object to his findings within 14 days of its date and warned that failure to file objections within 14 days will result in waiver of objections before the District Court and upon appeal. (R & R at 20). As of the date of this order, Mercier has not filed any objections to the Report or requested an extension of time to file objections. Having reviewed the Report, to which no objection was made, the Court finds no clear error in the R&R. Accordingly, the Court adopts the Report in its entirety as the decision of the Court.

In accordance with Magistrate Judge Francis's R &R, Defendants' motion for summary judgment (Dkt. No. 33) is GRANTED and Plaintiff's complaint is dismissed. The Clerk of Court is directed to close the motion and close the case.

SO ORDERED.

Dated: August 19, 2013
New York, New York

A handwritten signature in black ink, reading "Andrew L. Carter, Jr.", written over a horizontal line.

ANDREW L. CARTER, JR.
United States District Judge